.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 22.04.2016

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CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P(MD)No.455 of 2005

A.Ayyappan Pillai .. Petitioner/Plaintiff/Petitioner

Vs.

1.The District Collector,
Kanyakumari District at Nagercoil.

2.The Taluk Supply Officer,
Kuzhithurai,
Vilavancode Taluk,
Kanyakumari District. .. Respondents/Defendants/Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1903 against the order of the I-Additional District Munsif Court, Nagercoil, dated 18.10.2004 in E.P.No.98 of 2002 in O.S.No.416 of 1999.

For Petitioner : Mr.C.Godwin
For Respondents : Mr.C.Selvaraj
Special Government Pleader

ORDER

Challenging the order passed by the learned I-Additional District Munsif, Nagercoil, dated 18.10.2004 in E.P.No.98 of 2002 in O.S.No.416 of 1999, the plaintiff/petitioner has filed the present Civil Revision Petition.

2. The plaintiff has filed a suit in O.S.No.416 of 1999 before the learned I-Additional District Munsif, Nagercoil seeking for a mandatory injunction directing the defendants to pass necessary orders to disburse the gratuity due to his wife/late.Parvathi Bai, sanctioned by the Accountant General's Office on 08.05.1998 and other dues namely, arrears of salary from 01.01.1996 to 24.06.1997, Earned Leave surrender arrears for 146 days, unearned leave arrears for 90 days, salary arrears from 01.01.1996 to 24.06.1997 calculated as per the revised scale of pay to the plaintiff and G.P.F dues for the month of January and February,

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1990 while his wife was working at Kalkulam Taluk Office with interest towards the said dues from the date of due. The trial Court, after considering the entire materials available on record, has decreed the suit. The plaintiff has filed an execution petition in E.A.No.98 of 2002 to execute the ex-parte decree passed in the said suit. The said application was allowed with 6% interest. Challenging the order of interest, the petitioner has filed the present Civil Revision Petition.

3. The learned counsel appearing for the petitioner contended that the order passed by the trial Court is contrary to law and the Court below ought to have ordered the E.P, as prayed for. The Court below failed to see that the petitioner has claimed 12% interest in paragraph No.10 of the plaint and as such, the petitioner is entitled to get 12% interest throughout. The trial Court failed to see that the trial Court has decreed the suit as prayed for and as such the petitioner is entitled to 12% interest throughout. The Court below erred in fixing the interest at 12% upto decree and 6% thereafter. Hence, the order of fixing the rate of interest at 6% is not maintainable and the same is liable to be set aside and the Civil Revision Petition has to be allowed.

4. The learned counsel appearing for the respondents would contend that the trial Court, after considering the entire materials available on record, passed an appropriate order and hence, no interference is necessary in the order passed by the Trial Court and the Civil Revision Petition is liable to be dismissed.

5. Heard both sides.

6. The plaintiff has filed a suit in O.S.No.416 of 1999 against the respondents/defendants and the said suit is for mandatory injunction and the trial Court, after considering the evidence of P.W.1 and Exs.P.1 to P.3, decreed the suit as prayed for.

7. It is useful to refer the prayer column in the suit and the same reads as follows:-

> *"A.Decree for a mandatory injunction directing the defendants to pass necessary orders to disburse the gratuity dues to his wife/late.Parvathi Bai sanctioned by the Accountant General's Office on 08.05.1998 and other dues namely, arrears of salary from 01.01.1996 to 24.06.1997, earned leave surrender arrears for 146 days, unearned leave arrears for 90 days, salary arrears from 01.01.1996 to 24.06.1997 calculated as per the revised scale of pay to the plaintiff and G.P.F dues for the month of January and February, 1990 while his wife was working at Kalkulam Taluk Office with interest towards*

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the said dues from the date of due.

B.Costs of the suit from the defendants"

8. On a careful reading of the prayer column in the suit it is seen that there is no mention about the rate of interest and it has been mentioned only as "interest towards the said dues from the date of due". Since there is no specific mention about the interest and the suit is filed for mandatory injunction, the Trial Court directed the respondents to pay the amounts mentioned in the petition.

9. In the above circumstances, the present petitioner has filed E.P.No.98 of 2002 and in that Execution Petition, the respondents have filed their counter. After contest, the trial Court directed the respondents to pay the amounts mentioned in the petition with 6% interest. In this case, it is further pertinent to note that in the decree, there is no mention about the interest. If at all the plaintiff has grievance at the rate of interest, he is entitled to file an amendment petition to amend the decree and the Executing Court cannot go behind the decree. Anyhow, the Executing Court had allowed the petition and directed the respondents to pay interest at 6% interest from 22.07.2000 till the date of realisation. Against the order passed by the learned Principal District Munsif, Nagercoil, the Government has not preferred any appeal or revision.

10. In the above circumstances, this Court is of the considered view that there is no illegality or irregularity in the order passed by the trial Court, much less warranting any interference, in dismissing the application, even though this petition is not maintainable and the Civil Revision Petition is liable to be dismissed.

11. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To
The I-Additional District Munsif Court, Nagercoil.
Copy to:The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.C.Godwin Advocate inSr.No.23048

SDR/SK/SAR-II/01.06.2016/3P/4C

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